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EXAMINER

HAND, MELANIE JO

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3761

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/730,260

Applicant(s)

OTSUBO, TOSHIFUMI

Examiner

MELANIE J. HAND

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 November 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 3-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 3-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
- Certified copies of the priority documents have been received.
 - Certified copies of the priority documents have been received in Application No. _____.
 - Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/21/07.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION***Response to Arguments***

1. Applicant's arguments filed November 21, 2007 have been fully considered but they are not persuasive.
2. With respect to arguments regarding claim 3: Applicant argues that Jitoe does not teach or disclose the claimed bonding sites at which the outer sheet and inner sheet of the chassis are joined together. This is not persuasive because the features upon which applicant relies (i.e., bonding sites at which the inner sheet and outer sheet of the chassis are bonded together) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claim 3 merely recites a chassis comprising an outer sheet and inner sheet joined at a plurality of bonding sites. Claim 3 does not set forth that the sheets are joined together. Further, because Jitoe teaches an absorbent structure extending on an inner surface of the chassis and bonding sites that join the outer surface of the chassis to the structure (core 4), Jitoe teaches joining the outer sheet to the inner sheet of the chassis at those bonding sites, albeit indirectly.
3. With respect to arguments regarding claim 14: Applicant argues that there is no support in Jitoe for joining sites distributed between every pair of adjacent claimed auxiliary elastic members 21 and between transversely opposite side edges of the absorbent structure. The support can be found in paragraph 0016 of Jitoe, where Jitoe teaches that the auxiliary elastic members 21B-D cross the core between the rear face sheet 2 and an external surface (read: bottom surface) of the core 4. The crossing of the elastic members 21B-D is interpreted herein as traversing the core without being bonded thereto or otherwise interrupted. Thus in order for

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the core to be bonded to the rear face sheet 2, wherein bonded is interpreted herein as being fully attached to the rear face sheet with no freely moving or rotatable portions, the joining sites must necessarily be present between every pair of adjacent said auxiliary elastic members 21B-D. Further, in order to avoid bonding the auxiliary elastic members 21B-D while bonding the absorbent core 4 to the rear face sheet, the joining sites are necessarily within the boundaries of the absorbent structure (core 4), i.e. between the transversely opposite side edges of said absorbent structure 4.

4. With respect to arguments regarding claim 15: Applicant argues that joining sites 9 are not distributed at least in an area underlying the absorbent structure. This is not found persuasive because the features upon which applicant relies (i.e., joining sites distributed at least in an area underlying said absorbent structure) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). This is not a limitation of claim 15. Rather it is a limitation of amended claim 3, wherein Examiner has not applied joining sites 9 as a structural feature anticipating the claimed joining sites. The necessary location of the joining sites of Jitoe under the absorbent structure 4, specifically between its transversely opposed side edges, is addressed *supra*.

5. With respect to arguments regarding claims 5 and 11: Applicant's arguments with respect to claims 5 and 11 have been considered but are moot in view of the new ground(s) of rejection.

6. With respect to arguments regarding claim 12: Applicant argues that the dimension of 3-20 mm is the width of the elastic members of Jitoe, rather than length. While this is true, and is omitted from the rejection of claim 12 herein, the suggestion to modify the article of Jitoe in light

of the court's holding in KSR International v. Teleflex is still valid and applicable and is maintained herein.

7. With respect to arguments regarding the rejection of claim 21: Applicant argues that Jitoe does not teach that some of the joining sites are disposed between a topmost one of the auxiliary elastic members and a longitudinal end of the absorbent structure in at least one of said front and rear waist regions "so as to prevent the middle portions of the topmost auxiliary elastic member from moving in the longitudinal direction beyond said longitudinal end of the absorbent structure...". The portion of this citation underlined for emphasis by applicant is functional language that is given little patentable weight herein. As stated *supra* with respect to applicant's arguments regarding claim 14, there exist joining sites taught by Jitoe that are disposed between each pair of adjacent auxiliary elastic members, including the topmost member, and also there are joining sites adjacent that topmost member to fully bond the absorbent structure to the rear face sheet 2. Thus there are some joining sites taught by Jitoe disposed between a topmost one of the auxiliary elastic members (e.g. member 21B) and a longitudinal end of absorbent structure 4, certainly at least in the front waist region. Thus since some of the joining sites meet the structural limitations of claim 21, the joining sites are inherently and necessarily capable of meeting the functional limitation (underlined *supra*) of claim 21.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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8. Claims 1-4, 9, 10, 13-17, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Jitoue et al (JP 2000-107225).

With respect to claim 1: Jitoue teaches a pants-type disposable wearing article, comprising: a longitudinal direction, a waist-surrounding direction orthogonal to said longitudinal direction, a chassis defining a front waist region 6, a rear waist region 7, a crotch region extending in said longitudinal direction between said front and rear waist regions (Fig. 1), an elasticized waist-hole 11 (Fig. 1, Abstract) and a pair of elasticized leg-holes 12 having elastic members 16 (Fig. 1, ¶¶0018), an absorbent structure 4 extending on an inner surface of said chassis between said front and rear waist regions 6,7 (Fig. 1, ¶¶0014). A plurality of auxiliary elastic members 21 are secured to said chassis by being elongated uniformly crosswise of diaper 1 (see Fig. 1) and then joined to the side edges of the diaper 1 in joining regions 9 (i.e. they are secured in a stretched state) (¶¶0018). Elastic members 21 extend in said waist surrounding direction so as to cross said absorbent structure 4 in at least one of the front and rear waist regions. (¶¶0016) Each of said auxiliary elastic members 21 have, in said waist surrounding direction, opposite end portions defined by those portions that extend from respective side edges 23 of core 4 to the respective joining region 9 of diaper 1, and a middle portion located between said opposite end portions, said opposite end portions being secured to said chassis in vicinities of transversely opposite side edges of the one of said front and rear waist regions (i.e. the vicinities are side edges of diaper 1 comprising joining regions 9 taught by Jitoue). (¶¶0016-0018) The said middle portion (defined as the portion of elastics 21 that extend between the side edges 23 of core 4) is free of direct securement to said chassis in the one of said front and rear waist regions 6,7. (¶¶0017,0021) The chassis comprises an outer sheet 3 in the form of a rear face sheet and an inner sheet 2 in the form of a liquid permeability surface sheet joined at a plurality of joining

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regions, e.g. regions where elastics 21 are joined to the surface sheet 2 and/or rear sheet 3. (Figs. 1-3) Jitoue teaches that the core 4 is bonded to the rear face sheet 3, therefore there exist joining sites distributed at least in an area underlying said absorbent structure 4 in the one of said front and rear waist regions 6,7 (¶¶0016) and that are spaced one from another by a given space in said longitudinal direction (Fig. 1). The said joining sites are necessarily located between the middle portions of said auxiliary elastic members 21 as the middle portions of the members 21 are defined as the portions that extend between edges 23 of core 4.

With respect to **claim 4**: The plurality of joining sites 9 are distributed in a vicinity of transversely opposite side edges of said absorbent structure 1. (¶¶0017)

With respect to **claim 9**: The front and rear waist regions 6,7 of said chassis are joined to each other at the transversely opposite side edges. (Figs. 2,3, ¶¶0018)

With respect to **claim 10**: The article 1 further comprises a pair of leakage-barrier flaps in the form of cuffs at leg openings 12 that extend along transversely opposite side edges of said absorbent structure 1. (Fig. 1, ¶¶0015)

With respect to **claim 13**: Each of said auxiliary elastic members 21 is positioned between said inner and outer sheets 2,3 (Figs. 2,3); the middle portion of each of said auxiliary elastic members as defined *supra* by the Office with respect to claim 1 connects the opposite end portions of said auxiliary elastic member 21, and extends across an entire width of said absorbent structure 1 in the waist-surrounding direction from one of transversely opposite side edges of said absorbent structure to the other (Fig. 1, ¶¶0016,0017); and an entire section of

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said middle portion which is located between the transversely opposite side edges 23 of said absorbent structure 4 is directly bonded neither to the inner sheet nor to the outer sheet.

(¶0017)

With respect to **claim 14**: The said joining sites are distributed between every pair of adjacent said auxiliary elastic members 21 and between the transversely opposite side edges of said absorbent structure.

With respect to **claim 15**: The joining sites 9 are arranged only along and in vicinities of the transversely opposite side edges of said absorbent structure. (Fig. 1)

With respect to **claim 16**: The limitation of claim 16 is considered functional language, which is given little patentable weight herein.

With respect to **claim 17**: Each of said auxiliary elastic members 21 is entirely free of direct attachment to said chassis except at the opposite end portions of said auxiliary elastic member.

(¶0017)

With respect to **claim 19**: The auxiliary elastic members 21 are disposed between and spaced in the longitudinal direction from said elasticized waist hole and said elasticized leg holes. (Fig.

1)

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With respect to **claim 20**: An area of said chassis taught by Jitoue, specifically an area of rear face sheet 3, which underlies said absorbent structure 4, and across which said auxiliary elastic members 21 extend, is taught by Jitoue to be substantially free of gathers. (¶¶0021) The phrase "substantially free" is interpreted herein in a manner consistent with the disclosure, which states that there are no gathers formed "except for the waist-hole's peripheral portions 10, the vicinity of the side edges 13 contiguous to the waist's opposite side portions 11 and the leg-holes' peripheral portions 12 where a contractile force of the waist- and thigh-surrounding members 15, 16 acts on." (Specification, Page 15, lines 4-10)

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 5, 7, 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jitoue et al ('225).

With respect to **claim 5**: Jitoue teaches a pants-type disposable wearing article 1 having a longitudinal direction, a waist-surrounding direction orthogonal to said longitudinal direction, a front waist region 6, a rear waist region 7, a crotch region, an elasticized waist-hole 11 and a pair of elasticized leg-holes 12, said article 1 comprising a chassis and an absorbent structure 4 extending on an inner surface of said chassis between said front and rear waist regions 6,7, and a plurality of auxiliary elastic members 21 secured to said chassis in a stretched state in said waist surrounding direction so as to cross said absorbent structure 4 in at least one of said front and rear waist regions 6,7, said article 1 further comprising: said plurality of auxiliary elastic members 21 having opposite end portions defined as those portions of the elastic 21 extending

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between a side edge 23 of core 4 and the respective side edge of diaper 1, and a middle portion in said waist surrounding direction, said opposite end portions being secured to said chassis in vicinities of opposite side edges of the one of said front and rear waist regions (i.e. joining regions 9) while said middle portion being free to said chassis in the one of said front and rear waist regions.

Jitoue does not teach explicitly that a length of said auxiliary elastic members 21 in the waist-surrounding direction as measured in a contracted state thereof is substantially equal to a corresponding length of the absorbent structure in the one of said front and rear waist regions. The term "substantially equal" is interpreted herein in accordance with the following quantitative definition disclosed by applicant: "said length of said elastic members 21 is greater than a corresponding length of the absorbent structure in the one of said front and rear waist regions by 1-5 mm." However, this range is considered herein to fairly suggest a core having a width in which a auxiliary elastic member length in the range taught by Jitoue presents a length which exceeds a corresponding length of the absorbent structure (i.e. what is commonly called the transverse width) by 1-5 mm, as there is a finite number of absorbent core widths that will meet the claim limitation. The range of combinations of corresponding absorbent structure lengths and elastic lengths that meet this claim limitation is further limited by the distance between the legs of a user, which is universal among users of roughly the same size. That is, there is one substantially universal, standard limit on core width for infants and toddlers, and a second and larger, substantially universal limit on core width for adults. If there is a design need or a market pressure to solve a problem, and there are a finite number of identified, predictable solutions, a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385

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(U.S. 2007) One of ordinary skill in the art would be motivated to try core widths that conform to anatomical dimensions, i.e. one would have good reason to pursue known options within one's technical grasp for the core width in the article of Jitoue that, in combination with an auxiliary elastic member length in the range taught by Jitoue would meet the claim limitation. It would therefore be obvious to one of ordinary skill in the art to modify the article of Jitoue such that an auxiliary elastic member length that is within the range taught by Jitoue exceeds the corresponding absorbent structure length by 1-5 mm.

With respect to **claim 7**: Jitoue does not teach that said absorbent structure comprises a liquid-pervious inner sheet adapted to face a wearer's body, a substantially liquid-impervious outer sheet disposed on the inner surface of said chassis, and a liquid-absorbent core disposed between said liquid-pervious inner sheet and said substantially liquid-impervious outer sheet. However, this precise absorbent structure in this configuration with these properties (i.e. liquid pervious, liquid impervious, liquid absorbent) is well known in the art, therefore it would be obvious to one of ordinary skill in the art to modify the article taught by Jitoue such that the absorbent structure comprises these items with a reasonable expectation of success to ensure an effective absorbent article.

With respect to **claim 8**: Jitoue does not teach that said absorbent structure comprises a liquid-pervious inner sheet adapted to face a wearer's body, a substantially liquid-impervious outer sheet disposed on the inner surface of said chassis, and a liquid-absorbent core disposed between said liquid-pervious inner sheet and said substantially liquid-impervious outer sheet. However, this precise absorbent structure in this configuration with these properties (i.e. liquid pervious, liquid impervious, liquid absorbent) is well known in the art, therefore it would be

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obvious to one of ordinary skill in the art to modify the article taught by Jitoue such that the absorbent structure comprises these items with a reasonable expectation of success to ensure an effective absorbent article. Such an article fairly suggested by Jitoue with such an absorbent structure would thus have a back surface thereof covered with said chassis and therefore meet all of the claim limitations of claim 8.

With respect to claim 12: Jitoue does not explicitly teach a corresponding length for the absorbent structure and thus also does not explicitly teach that said length of said elastic members 21 is greater than a corresponding length of the absorbent structure in the one of said front and rear waist regions by 1-5 mm. However, this range is considered herein to fairly suggest a core having a width in which a auxiliary elastic member length in the range taught by Jitoue presents a length which exceeds a corresponding length of the absorbent structure (i.e. what is commonly called the transverse width) by 1-5 mm, as there is a finite number of absorbent core widths that will meet the claim limitation. The range of combinations of corresponding absorbent structure lengths and elastic lengths that meet this claim limitation is further limited by the distance between the legs of a user, which is universal among users of roughly the same size. That is, there is one substantially universal, standard limit on core width for infants and toddlers, and a second and larger, substantially universal limit on core width for adults. If there is a design need or a market pressure to solve a problem, and there are a finite number of identified, predictable solutions, a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007) One of ordinary skill in the art would be motivated to try core widths that conform to anatomical dimensions, i.e. one would have good

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reason to pursue known options within one's technical grasp for the core width in the article of Jitoue that, in combination with an auxiliary elastic member length in the range taught by Jitoue would meet the claim limitation. It would therefore be obvious to one of ordinary skill in the art to modify the article of Jitoue such that an auxiliary elastic member length that is within the range taught by Jitoue exceeds the corresponding absorbent structure length by 1-5 mm.

10. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jitoue in view of Matsuura et al (JP 07-236650).

With respect to **claim 11**: Jitoue does not teach explicitly that a length of said auxiliary elastic members 21 in the waist-surrounding direction as measured in a contracted state thereof is generally equal to a corresponding length of the absorbent structure in the one of said front and rear waist regions. Matsuura teaches an absorbent article in which auxiliary elastic members are secured only at their side edges and wherein the elastic members are, in their non-tensioned, or contracted state, 1.3 times the corresponding length of the core. Applicant has not provided a clear and sufficient description for the phrase "generally equal" thus the length of the auxiliary elastic taught by Matsuura in its contracted state is considered herein to be "generally equal" to the corresponding length of said core.

11. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jitoue in view of Ando et al (JP 2001-145666).

With respect to **claim 6**: Jitoue does not teach a picture on said chassis in an area underlying said absorbent structure in one of said front and rear waist regions 6,7. Ando teaches an

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absorbent article having a picture 53a on a chassis in an area underlying an absorbent structure 4, specifically in an area on a rear sheet 3, in a front waist region. ('666, ¶0015) Ando teaches that this picture lends improved appearance to the diaper, therefore it would be obvious to one of ordinary skill in the art to modify the article of Jitoue so as to have a picture on the chassis in an area underlying the absorbent core as taught by Ando to improve the appearance of the diaper.

With respect to **claim 18**: The middle portions of some of said auxiliary elastic members 21 underlie and extend across without causing gathers to be formed in the area of said chassis (¶0021). The limitation "thereby preventing the picture in said area from being distorted" is considered functional language that is given little patentable weight herein.

Jitoue does not teach a picture on said chassis in an area underlying said absorbent structure in one of said front and rear waist regions 6,7. Ando teaches an absorbent article having a picture 53a on a chassis in an area underlying an absorbent structure 4, specifically in an area on a rear sheet 3, in a front waist region. ('666, ¶0015) Ando teaches that this picture lends improved appearance to the diaper, therefore it would be obvious to one of ordinary skill in the art to modify the article of Jitoue so as to have a picture on the chassis in an area underlying the absorbent core as taught by Ando to improve the appearance of the diaper. The combined teaching of Jitoue and Ando thus teaches elastic members that extend across a picture and meet all of the claim limitations of claim 18.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
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TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER



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MJH